

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Implementation of the Subscriber)
Carrier Selection Changes Provisions of)
the Telecommunications Act of 1996) CC Docket No. 94-129
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

COMMENTS OF
INTERMEDIA COMMUNICATIONS INC.

Intermedia Communications Inc. ("Intermedia"), by its undersigned counsel, hereby submits the following comments in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned docket.¹ By way of introduction, Intermedia is one of the largest and fastest-growing competitive local exchange carriers ("CLECs") in the country, and provides a full range of local, access and interexchange services, including voice, data and enhanced services, to large and small businesses, and to carriers.

Intermedia applauds the Commission's continuing efforts to protect consumers against unauthorized switching of their primary carriers. As discussed herein, the complex and diverse telecommunications market resulting from passage of the Telecommunications Act of 1996 (the "Act") clearly necessitates clarification of existing verification procedures as well as additional safeguards to protect customers from unlawful and abusive slamming practices. As a general matter, Intermedia submits that the Commission's verification rules should

¹ See *In the Matter of Implementation of the Subscriber Carrier Selection Provision of the Telecommunications Act of 1996, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration*, FCC 97-248 (rel. July 15, 1997) ("FNPRM").

apply to all primary carrier ("PC") changes, regardless of the service category or type of carrier. However, because true competition has not yet materialized in the local exchange market and incumbent local exchange carriers ("ILECs") maintain monopoly control over bottleneck facilities including carrier change capabilities, Intermedia urges the Commission to adopt more stringent safeguards for ILECs to minimize their ability to manipulate the PC selection process. Absent such action by the Commission, the ILECs will have the incentive and means to behave anticompetitively, thereby thwarting competition in the local exchange market as envisaged by the Act.

I. The Commission's Proposed Rules Must Protect the Consumer from All Unauthorized Switching and Eliminate Potential Anticompetitive Practices Created by Incumbency

As a preliminary matter, Intermedia concurs with the Commission's tentative conclusion to apply the Section 258 verification requirements to *all* telecommunications carriers, including providers of basic local services.² Section 258 of the Act makes it unlawful for telecommunications carriers to "submit or execute a change in a subscriber's service . . . except in accordance with such verification procedures as the Commission shall prescribe."³ A plain reading of Section 258(a) indicates Congress' intent to subject all telecommunications carriers to the general prohibition against unauthorized PC changes with

² Additionally, Intermedia fully supports the Commission's conclusion that adoption of the verification procedures proposed in this proceeding will have the bonus effect of protecting customers from unauthorized access to their proprietary network information. *See FNPRM* at ¶ 10.

³ 47 U.S.C. § 258(a).

limited exceptions.⁴ Moreover, the pro-competitive goals of the Act require application of Section 258 to all carriers. As the Commission recognizes in the *FNPRM*, a major benefit of competition is that customers, previously limited in carrier selection, now have the ability to choose one or more carriers to provide all of their telecommunications services.⁵ Should the Commission interpret Section 258 to apply only to interexchange carriers, incumbent local exchange carriers, who continue to control bottleneck facilities and the PC selection process, would have no incentive to adhere to a customer's request to transfer service to another carrier. In light of the increased incidents of slamming in the interexchange market,⁶ it is clear that the verification procedures will prove necessary to discourage slamming in the emerging competitive local exchange market. Consequently, the application of the verification rules to all telecommunications carriers--including ILECs--is necessary not only to deter unlawful slamming practices, but also to restrict the ability of incumbents to use their former monopoly status to hinder competition.

Intermedia also agrees with the Commission's tentative conclusion that use of the verification rules should be required only for carriers submitting the PC change request. Requiring the executing carrier to also comply with the verification rules would be redundant and would not further the public interest. The submitting carrier is the only telecommunications carrier to have actual contact with the customer. The executing carrier's

⁴ The Act defines a telecommunications carrier as "any provider of telecommunications service, except that such term does not include aggregators of telecommunications services (as defined in section 226)." 47 U.S.C. § 153(43).

⁵ See *FNPRM* at ¶ 7.

⁶ In the *FNPRM*, the Commission notes that the incidents of slamming increased six-fold between 1993 and 1995. See *FNPRM* at ¶ 7.

role is functional only and does not require communication with the customer. Accordingly, application of the verification rules to the executing carrier would be overly burdensome with no tangible benefit to the consumer.

However, recognizing that ILECs are uniquely positioned to manipulate the PC selection process, Intermedia recommends implementation of reporting requirements for ILECs in addition to application of the verification rules. The ILECs currently have a captive customer base in the local market and will continue to maintain the vast majority of its established base in the foreseeable future. Additionally, because customers will continue to contact ILECs to address local service issues, the ILEC will have a captive audience to which it can market its long distance services. Even if the ILEC markets its long distance services separately, it will remain the point of contact for issues related to local service such as new installations and facilities maintenance. As a result of this uniquely competitive edge resulting from incumbency, it is imperative that the Commission implement additional safeguards to minimize the potential for unfair and discriminatory practices by the ILECs.

Additionally, to monitor the quality of PC change services provided by the local carrier to unaffiliated carriers, ILECs should be required to file reports, at least on a semi-annual basis, comparing the quality of PC change service provided to the ILEC or an affiliate as the submitting and executing carrier to situations where the ILEC acts as the executing carrier for an unaffiliated carrier. Such reporting is essential to determine whether the ILEC is performing PC changes to competing carriers with the same speed and accuracy that it changes PC designations to itself or its affiliate. The reports should include information detailing the name of the submitting carrier, the type of verification procedure used and the time elapsed before the switch was completed. Finally, Intermedia submits that where the

ILEC is acting as the submitting and executing carrier, the only verification option allowable should be use of a neutral third party administrator. Intermedia believes that additional reporting requirements and restrictive use of verification procedures will facilitate the detection of unfair switching practices on the part of the ILEC.

II. Inbound Calls Also Should Be Subject to the Commission's Verification Rules

Likewise, the Commission also should apply the verification rules to any action or activity which would result in a switch from the subscriber's current primary carrier, whether initiated by a competing carrier or the customer. Significantly, Section 258 of the Act makes no exceptions for calls initiated by the customer and requires compliance with the Commission's verification procedures before a change can be made pursuant to *any* PC requests. Furthermore, it would be inaccurate to assume that all inbound calls to a carrier are to initiate a PC change. There are numerous reasons why a customer calls its presubscribed carrier which may not entail a PC change request, such as to inquire about billing practices or to make maintenance requests. In these instances, the verification process would prove essential to ensure that consumers are not unwittingly coerced or coaxed into agreeing to switch their primary carriers. Additionally, to the extent that the customer initiates a call to inquire about the possibility of a PC change, requiring carriers to verify such requests also would ensure that the customer actually desires to change its primary carrier and understands that the carrier will be changed as a result of the customer's call.

III. The Commission Must Apply the Verification Rules to PC-Freezes to Ensure the Growth of Competition in the Local Market

As aptly stated by MCI in its *Petition for Rulemaking*,⁷ incumbents use the PC-freeze during the transition from monopoly to competition to create an insuperable barrier to entry by emerging carriers. Although cloaked under the guise of consumer protection, incumbents have traditionally used the PC-freeze to impede customer flexibility in carrier selection, thereby ultimately thwarting competition. The Commission must recognize that, at this stage, PC-freeze requests are appropriate only in the markets where ample competition has emerged. Thus, while PC-freeze may be appropriate in the interexchange market, at this time, Intermedia believes that use of PC-freezes in the local market is unwarranted and will only impede competition. In the local services market, consumers, for the most part, remain presubscribed to the incumbent carrier with no alternative service provider. Thus, the only beneficiaries of PC-freezes in the local market are the ILECs who can lock-in customer selection before any real alternatives are available. Additionally, as noted by the Commission in the *FNPRM*, the very nature of the PC-freeze inhibits competition because customers must take the additional step of notifying the current carrier of their desire to have the freeze lifted before the new carrier's switch request can be effectuated.⁸ Moreover, not all customers are willing to take this extra, affirmative step, even where they have agreed to the switch. The Commission therefore, should issue a moratorium prohibiting PC-freezes in

⁷ *MCI Telecommunications Corporation, Petition for Rulemaking, In the Matter of Policies and Rules Pertaining to Local Exchange Carrier "Freezes" on Consumer Choices for Primary Local Exchange or Interexchange Carriers*, CCB/CPD 97-19, RM-9085 (filed March 18, 1997).

⁸ See *FNPRM* at ¶ 22.

local markets not yet open to effective competition. Although it is not clear how long the transition to competition may take, the Commission should prohibit solicitation or enforcement of PC-freezes until clearly warranted by competitive market conditions.

Should the Commission find it appropriate to allow PC-freezes in the local market at this time, the Commission must, at a minimum, apply verification procedures to PC-freeze requests. In addition, to mitigate potential discriminatory practices by the incumbents, the Commission also should require completion of any verification process by a neutral independent third party.

IV. Rules Regarding Carrier Notification of Material Change in the Underlying Service Provider Should Be Required

Intermedia supports the proposal submitted by the Telecommunications Resellers Association ("TRA") to require carriers to notify customers in the event of a material change in the underlying carrier. Consistent with the Commission's tentative conclusion, Intermedia supports use of a "bright-line" test to clearly establish when customers should be notified of a carrier change. Intermedia, however, believes that the proper standard to determine applicability of the "bright-line" test is whether the reseller's representation of the underlying carrier is material to the customer. To that end, Intermedia encourages the Commission to adopt the standard proposed by TRA requiring subscriber notification where the reseller: (1) identified the name of the underlying carrier and pledged to its customers in writing that it would not switch networks; or (2) identified its network provider on its billing statement within six months prior to the change in its underlying carrier.⁹

⁹ See *id.* at ¶ 38.

Intermedia submits that use of the "materiality" standard is more appropriate because it clearly delineates the circumstances under which customer notification is required. Moreover, the reliance standard proposed by the Commission requires is more subjective and creates the type of uncertainty the bright-line test seeks to eliminate. Furthermore, more restrictive policies would undermine CLEC incentive to invest in their architecture.

V, Conclusion

As discussed above, Intermedia requests that the Commission adopt rules and regulations governing the PC selection process in compliance with the discussion contained herein.

Respectfully submitted,

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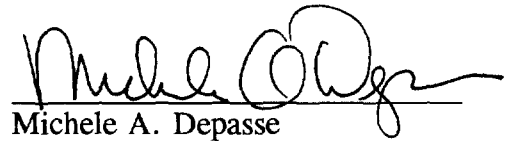
CERTIFICATE OF SERVICE

I, Michele Depasse, hereby certify that I have caused a copy of the foregoing "Comments of Intermedia Communications Inc.," to be served on this 15th day of September, 1997, by hand delivery, upon the following:

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